

1 Mr. Crispin.

2 MR. CRISPIN: As I understand the reported case,  
3 Your Honor, the Bureau here has the obligation to show good  
4 cause. That's the way I understand the case --

5 JUDGE GONZALEZ: Right.

6 MR. CRISPIN: -- at minimum they have to show good  
7 cause. Now, if -- you know, it -- I think it defies reason to  
8 suggest that the principals at TDS and SJI are going to be  
9 intimidated by Mr. Belendiuk, the person they hired. I don't  
10 buy that. And if that were the case, why isn't there an  
11 objection from TDS or -- or SJI? There's no objection.  
12 There's no objection from any of these people, Your Honor. I  
13 submit to you that as a party, especially the type of party --  
14 by your order to confront and rebut, the issue of him  
15 participating in these depositions I think frankly has been  
16 decided.

17 JUDGE GONZALEZ: Well, I -- again, I certainly feel  
18 and intend to -- I feel that he will have that opportunity and  
19 I certainly intend to give him that opportunity. Certainly,  
20 I'm very sensitized to the importance of preserving his  
21 reputation as a member of this bar and I would in no way  
22 compromise knowingly anyway his ability to respond to any  
23 allegations made against him personally. I just don't see how  
24 excluding his physical presence would necessarily deny him  
25 that right --

1 MR. CRISPIN: Well, let me explain to you how --

2 JUDGE GONZALEZ: -- or would deny him that right.

3 MR. CRISPIN: Let me explain to you if I might how  
4 that might happen. Counsel is correct in suggesting that  
5 these are events that occurred some seven years ago and there  
6 is record in this case, Your Honor, that is -- to say that is  
7 large is an understatement -- and it was just huge. Now, Your  
8 Honor, Mr. Belendiuk -- I am in no way in a position to agree  
9 with every single document in this case. Mr. Belendiuk  
10 participated in this case for many, many years. If I cannot  
11 with Mr. Belendiuk when someone says something -- I may not  
12 even understand the significance of the allegations. Did you  
13 say this to so and so? Answer. Yes or no. I may not  
14 understand or have any understanding that that is critical to  
15 something that Mr. Belendiuk was supposed to have said or  
16 done. I think that the way the parties have traditionally  
17 been treated -- again, after 17 years, Your Honor, I have  
18 never seen a federal or an administrative law judge or a state  
19 law judge deny a party the right to be at a deposition to  
20 confront what people say. That's their, that's their right.  
21 I think that's what was bargained for in our agreement. We've  
22 performed pursuant to that agreement and I really find it  
23 very, very troublesome to see that we're at this stage. I  
24 really have a problem with that. Now, you know, if  
25 Mr. Belendiuk -- if, if what is being considered here, there's

1 a notion that Mr. Belendiuk is going to be outside of the room  
2 and I can, I can run out of the room with questions each time,  
3 I'm suggesting that that would be more disruptive than  
4 anything else. Excuse me, I want to talk to my client  
5 regarding to see if that is of some significance to this case.  
6 I do not understand and there's been no showing made here how  
7 in any way Mr. Belendiuk's physical presence is going to  
8 intimidate any witnesses, and if there was any feeling that it  
9 was going to intimidate these witnesses my guess is that the  
10 representatives of those parties sitting here to my right  
11 would have filed a motion in support of the Bureau. They  
12 haven't. How can the Bureau presuppose and make to you any  
13 kind of factual showing on which you can make a finding of  
14 good cause which I submit you have to do based on their fear  
15 that witnesses they have never talked to are going to be  
16 intimidated by Mr. Belendiuk's presence? I'm sorry, I don't  
17 get it.

18 JUDGE GONZALEZ: I think, Mr. Weber, he raises a  
19 point to which I think you should respond.

20 MR. WEBER: Yes, I mean I --

21 JUDGE GONZALEZ: I mean, why do you feel, why do you  
22 feel specifically that just his physical presence somehow will  
23 --

24 MR. WEBER: It's not only --

25 JUDGE GONZALEZ: I mean, these gentlemen are very

1 accomplished men, I gather. How, how would it intimidate  
2 someone of that standing?

3 MR. WEBER: It's not only an intimidation factor.  
4 We do see that as a potential. But I also have stated that  
5 they might not be as forthcoming with him in the room if one  
6 of the witnesses may believe that let's say it's Mr.  
7 Belendiuk's fault they got into this, they might be less  
8 likely to say that with him sitting there in the room. And I  
9 just really believe that, that certain testimony about their  
10 interactions with him may be somewhat influenced by his  
11 presence.

12 JUDGE GONZALEZ: Do, do you perceive their interests  
13 as being parallel, or, or perhaps maybe in some cases opposed  
14 to each other?

15 MR. WEBER: I mean, in many -- in some ways they  
16 could be parallel and in some ways they could be opposed to  
17 each other. Mr. Belendiuk's interest is certainly different  
18 than TDS's interest and different than SJI's interest, but in  
19 some ways they do coincide. It would certainly be in all of  
20 their interests if all of them could have their, their  
21 testimonies exactly mesh and, and coincide with one another if  
22 they could have a single straight story. And I think it's  
23 important to avoid having that happen and that's why witnesses  
24 are sequestered, to make sure testimonies don't always have to  
25 jibe up, that each witness is recalling the, the story the way

1 that that witness, you know, saw it happened.

2 JUDGE GONZALEZ: But we have no reason that they're  
3 going to coach other though do we?

4 MR. WEBER: Absolutely not. I'm not, I'm not  
5 suggesting otherwise.

6 MR. CRISPIN: To think, Your Honor, that Mr. Leroy's  
7 (phonetic sp.) counsel -- corporate ties are going to be  
8 intimidated by Mr. Belendiuk just doesn't --

9 JUDGE GONZALEZ: I'd say, Mr. Weber, what concerned  
10 me most was the point that Mr. Crispin made. The record is --  
11 I have been told, I mean obviously I wasn't one of the first  
12 judges on this case -- is very extensive and I wonder if it  
13 would not really place Mr. Crispin at a disadvantage -- a  
14 significant disadvantage if, if he could not consult with his  
15 client during the course of a deposition. If, if the record  
16 were smaller and Mr. Crispin could grasp everything that had  
17 occurred a number of years ago, then maybe I would be more  
18 likely to say well, gee, it's not that much of a handicap for  
19 him. But I think that it would be in this case, I think it  
20 would be a significant handicap for Mr. Crispin. And again,  
21 I'm not really persuaded that just his physical presence would  
22 be enough of a factor to, to color the testimony of the other  
23 witnesses. I'll give you an opportunity to make further  
24 argument if you so desire, but at this juncture I really can't  
25 say that I'm convinced.

1                   MR. WEBER: Well, I think in some ways Mr. Crispin  
2 is probably -- may be minimalizing his ability as, as an  
3 attorney. I, I am confident that he is far more familiar with  
4 the record than what he's letting on today. I mean, as he  
5 mentioned himself, he did work with our discovery agreement  
6 and he was definitely an integral part of I'm sure compiling  
7 the documents which Mr. Belendiuk turned over as a part of  
8 discovery. I really do believe that he would be able to  
9 represent Mr. Belendiuk's interests without Mr. Belendiuk  
10 present, otherwise, you know, Mr. Belendiuk wouldn't even need  
11 counsel. He has counsel to represent his interests. If it's  
12 impossible for counsel to, to ever learn the record, then  
13 Mr. Belendiuk would never need to hire counsel. I, I do  
14 understand your, your feelings about whether or not Mr.  
15 Belendiuk would influence other witnesses' testimony and we're  
16 not unsympathetic to that. We, we still believe that there is  
17 an intimidation factor or just a factor where their, their  
18 testimony could otherwise be colored. If, if we cannot reach  
19 an agreement that Mr. Belendiuk should be excluded from the  
20 depositions -- we would request that he still be excluded from  
21 the depositions before -- for the simple reason we don't want  
22 his memory any way influenced by what other witnesses testify.  
23 Now, from my understanding there's only a few depositions he  
24 plans on attending before his own. Again, Mr. Crispin can  
25 speak to that. My understanding it is only -- Mr. John Brady

1 and Mr. Pat are the only two he intends upon attending and  
2 therefore I don't think it would be that great of a hardship  
3 to, to just keep him from attending those two depositions.

4 JUDGE GONZALEZ: You would prefer that his  
5 deposition go before the others?

6 MR. WEBER: At this point, with --

7 JUDGE GONZALEZ: Would that be a solution to  
8 your -- or would that help you?

9 MR. WEBER: If it would, if it would be possible it  
10 would help, but the Bradys' depositions are in Louisiana and  
11 those are already scheduled for us to be in Louisiana that  
12 week and I don't see any way we could have Mr. Belendiuk's  
13 deposition prior to that point. I certainly hope we can reach  
14 an agreement with the parties. The Bureau does not have the  
15 burden of proceeding in this so we will not be calling the  
16 first witnesses. But I would like to once the proceeding  
17 itself ts to reach an agreement with TDS to have  
18 Mr. Belendiuk be one of the first if not the first witness so  
19 we could avoid this problem once the proceeding ts and then  
20 Mr. Belendiuk certainly can attend the proceeding every day  
21 after that.

22 JUDGE GONZALEZ: Well, I think I'm sensitive to the  
23 concerns on both sides, quite frankly. I mean, I think the --  
24 I can understand the Common Carrier Bureau's position in light  
25 of the Commission's hearing designation order and I can also

1 sympathize with, with Mr. Crispin's concerns.

2 MR. EMMONS: Your Honor, may I be heard for a  
3 moment?

4 JUDGE GONZALEZ: Yes, sir.

5 MR. EMMONS: Nathaniel Emmons for TDS. I have a  
6 personal experience that, that I think bears on this that you  
7 can take for what it's worth. In a license renewal challenge  
8 case some years ago exactly the same question arose.  
9 Depositions -- an officer of the licensee corporation came in  
10 to attend the first of several depositions of his employees.  
11 He himself was scheduled to be a deponent at a later date.  
12 Counsel for the other party objected to his presence, citing  
13 the very reasons that Mr. Weber had cited, principally, that  
14 his presence might intimidate the testimony of his employees  
15 and that he should be excluded. Judge Fitzpatrick was then  
16 the chief judge and was the presiding judge in the case and  
17 ruled on, on the question and what he ruled was that Rule 615  
18 gives an absolute right to a party to be represented at a  
19 proceeding and he therefore rejected the -- or overruled the  
20 objections and allowed the officer of the corporation to  
21 attend the depositions. I think Mr. Crispin makes an  
22 excellent point in pointing out that in this case the case for  
23 Mr. Belendiuk's right to attend is even stronger because Mr.  
24 Belendiuk is a natural party and not a corporation. So,  
25 whatever that precedent is worth, Your Honor, I pass it on to



1 you.

2 JUDGE GONZALEZ: Is there any way, Mr. Crispin, we  
3 can address the Bureau's concern as to perhaps the effect of  
4 hearing other testimony might have on Mr. Belendiuk's  
5 testimony?

6 MR. CRISPIN: Well, again, Your Honor, now, in this  
7 case, I think we have to look at this case -- I want to make  
8 a personal point with respect to knowing more than I have let  
9 on to know. I'm not in -- that's not my personal style to  
10 misrepresent facts to judges or lack candor before judges,  
11 lrt's be very clear about that. I've never looked at the SJI  
12 documents, nor have I looked at the TDS documents -- and  
13 there's just no physical or human way without using a large  
14 portion of my 140-person law firm that I would be able to do  
15 that before this deposition occurred. So let's reject the  
16 notion, please, accept my word for it, if you will, that that  
17 has not occurred, and I am going to be working at -- and Your  
18 Honor, one of the things you've got to determine is whether I  
19 can effectively represent my client at these depositions given  
20 the status of this case which again is, Your Honor, that we  
21 thought we had made a straightforward arrangement on this and  
22 confronting and rebutting at trial and at, at discovery --  
23 rather straightforward about that. Now, on that basis, Your  
24 Honor, I did read all the TDS and SJI documents because quite  
25 frankly I thought I had a deal and now I guess I don't have a

1 deal but we'll leave that where it is.

2 MR. SCHNEIDER: Your Honor, this is Mark Schneider  
3 for United States Cellular Corporation. I'd like to make a  
4 few points. One, the record in this case which I don't know  
5 that you are completely familiar with now, is over 50,000  
6 pages of documents thst have been produced. More than 100  
7 times the amount of documents that was produced in the  
8 original proceedings pursuant to the original discovery  
9 agreement. The United States Cellular Corporation pursuant to  
10 the discovery agreement with Mr. Crispin -- undertook to  
11 obtain documents from all of the parties and to produce them  
12 in an organized fashion at the office of -- that Mr. Crispin  
13 has described and that it was not his duty to produce them, it  
14 was ours under the discovery agreement. I do want to make  
15 that clear just so that that fact is clear on the record.  
16 Second, with respect to two points that have been made, I will  
17 say that it does not appear to us as counsel to the United  
18 States Cellular Corporation that our witnesses would be  
19 intimidated by Mr. Belendiuk. We're taking no position at  
20 least as far as the merits or as far as the interests in this  
21 motion today but I will say that we are not -- I don't believe  
22 our witnesses will be intimidated. Second, I hope this  
23 proceeding is all about getting to the truth. To the extent  
24 that Mr. Belendiuk -- I would think that's what we want and I  
25 personally have no problem and no suspicion that anybody here

1 will change their testimony. This record stands as a monument  
2 to the fact that you have to testify clearly and precisely.  
3 Finally, I really do believe that the issue comes down to Rule  
4 615 and with any ambivalence I may feel towards the dispute  
5 I've heard today, I can't help but look at Rule 615 and the  
6 other rules and have read the case law and concluded that a  
7 natural party whether a limited party or not, the natural  
8 person has the right to confront and be present that there's  
9 something inalienable about your right to hear what's being  
10 said about you and advise your counsel about how to present  
11 questions directed to that. Now, that being said, my interest  
12 is in making sure this proceeding runs smoothly from here  
13 forward and it's just those three facts that I'd like to  
14 state.

15 MR. WEBER: If I may respond briefly?

16 JUDGE GONZALEZ: Sure.

17 MR. WEBER: The Bureau certainly always has the  
18 interest that this proceeding runs smoothly and I, I hope  
19 you've noticed in comments the Bureau has filed we've tried to  
20 keep the issues narrow in this proceeding, we don't want this  
21 developing into, into an uncontrollable proceeding and the  
22 Bureau certainly is striving towards that goal. As to Rule  
23 615, if you recall he did cite to that. We also believe that  
24 the courts have shown that an administrative proceeding has a  
25 lot more authority around rule 615. But even if you forget

1 about 615 for a second, there's Federal Rule of Civil  
2 Procedure 26 which will allow a trier of fact to exclude a  
3 party from a deposition. And courts have shown that when you  
4 take Federal Rule of Procedure 26 with Federal Rule of  
5 Evidence 615, Federal Rule 26 prevails and so therefore you're  
6 allowed to exclude a witness from a proceeding, or from a  
7 deposition. And whereas Federal Rule of Evidence 615 really  
8 goes towards the trial itself, the 26 goes more towards the  
9 pretrial proceeding.

10 JUDGE GONZALEZ: Yeah, I think, I think it's quite  
11 conceivable there could be instances where a party would be  
12 excluded from a deposition. I'm not really convinced that  
13 this should be the, the case here. But I would like now to  
14 address the question of whether there's some way we can  
15 resolve the Bureau's concern with respect to coloration of, of  
16 Mr. Belendiuk's testimony if, if he should hear testimony of  
17 other witnesses.

18 MR. CRISPIN: Your Honor, I think that -- first of  
19 all, I want to reiterate because I, I think that -- I think  
20 seriously that we ought to begin the assumption Mr. Belendiuk,  
21 who is a lawyer in good standing, as I understand, with the  
22 bar, is going to tell the truth. I think that's a place --  
23 that's a position that I think we all should start with in  
24 this case. I think we should also start with the proposition  
25 that whether something terrible happens to TDS or whether

1 something terrible happens to the plaintiff's bar in this case  
2 is of no interest to Mr. Belendiuk. He doesn't have interest  
3 in this case other than his good name. So, we don't even have  
4 a situation, Your Honor, where a lawyer, officer of the court,  
5 has any motive to, to be influenced by anything else. The  
6 sole purpose that he's here for is to protect his good name  
7 and reputation if that arises. It may not arise, but it may  
8 arise and if it arises he has the right -- I can't do that if  
9 I'm not --

10 JUDGE GONZALEZ: No, I, I -- you don't have to  
11 reargue that point, Mr. Crispin, because I've already  
12 concluded that --

13 MR. CRISPIN: Okay, but that, that also --

14 JUDGE GONZALEZ: -- he ought to be -- he certainly  
15 has the right to be present, you're entitled to have -- during  
16 the depositions, I don't have any problem with that. What I'm  
17 trying to find out is there some way we can accommodate the  
18 Bureau's concerns --

19 MR. CRISPIN: At the trial phase.

20 JUDGE GONZALEZ: -- about the coloration.

21 MR. CRISPIN: At the trial phase. Is that --

22 JUDGE GONZALEZ: At the trial phase?

23 MR. CRISPIN: -- is that where you're at now, at the  
24 trial phase?

25 JUDGE GONZALEZ: No, we're talking about the

1 depositions, right?

2 MR. CRISPIN: Okay. I'm sorry.

3 JUDGE GONZALEZ: Wasn't it that you wanted to have  
4 his deposition go before certain other persons' depositions?

5 MR. SCHNEIDER: Well, Your Honor, there is one point  
6 we can make clear which is that the people -- people who have  
7 their character at stake are testifying last in this  
8 proceeding. They have agreed not because they felt it was  
9 right or wrong or -- they have agreed because the Commission  
10 asked them to sequester their -- Mr. Belendiuk will testify  
11 before all of the witnesses who have their character at issue  
12 in this proceeding. There is already a large protection built  
13 in.

14 MR. CRISPIN: In other words, you want --

15 JUDGE GONZALEZ: Mr. Weber, is that correct?

16 MR. WEBER: That is correct, Your Honor, I mentioned  
17 that. At this point we're, we're more concerned with Mr.  
18 Belendiuk's being at the SJI depositions. SJI was -- USCC's  
19 partner in the Le proceeding.

20 MR. CRISPIN: Whose character qualifications are not  
21 at issue in this case, who -- there has been no showing that  
22 they're going to be intimidated or harassed by Mr. Belendiuk  
23 who they hired, who they paid and who they controlled,  
24 whatever. And so I don't get it, Your Honor.

25 MR. WEBER: But they also --

1           MR. CRISPIN: It's the character qualifications at  
2 TDS that are at issue.

3           MR. KIRKLAND: James Kirkland for SJI. I did want  
4 to echo a point which Mr. Schneider had made earlier. I'm  
5 confident that -- intimidated by the presence of Mr.  
6 Belendiuk. I'm also concerned because we as well have agreed  
7 to -- on an informal basis to sequester our witnesses.  
8 However, the rationale I heard espoused by the Bureau today  
9 would seem to possibly be -- testimony used to prevent my  
10 witnesses from being present and attempt to bring depositions  
11 as well. And as with the other people who've spoken today, I  
12 can, I can personally attest that this record is quite  
13 voluminous, that even with the entire team devoted to this  
14 case that no human individual could possibly master all the  
15 details and I fully expect to rely on representatives of my  
16 clients to assist me in attending a subsequent deposition and  
17 I would be very concerned if anything came out of this hearing  
18 would call into question their right to do that. That's all I  
19 have to say.

20           MR. WEBER: I'm not real sure if you received an  
21 answer to your, your last question which --

22           JUDGE GONZALEZ: No, I haven't. I was just  
23 wondering is there some way to --

24           MR. WEBER: Because unfortunately we cannot change  
25 the order at this point of the depositions. That we do have a

1 deposition in New York City on Thursday and then in Louisiana  
2 on Tuesday and there's nowhere where Mr. Belendiuk's  
3 deposition can fit into those cracks.

4           MR. CRISPIN: But that, that is the point, Your  
5 Honor. This schedule is their schedule. After we made this  
6 agreement, after we produced the documents, after we did  
7 everything that we agreed to do they suggested a schedule.  
8 We've agreed to that schedule. They put Mr. Belendiuk first  
9 before -- after the SJI people but before what would be  
10 regarded as the critical people -- TDS people -- again, SJI's  
11 qualifications aren't at issue. What's critical here is TDS  
12 -- so, you know, we've done all of this at their behest. Now,  
13 at the eleventh hour just before the depositions are to start,  
14 all of a sudden, apparently because they've made some kind of  
15 error or whatever, all of a sudden we deny Mr. Belendiuk a  
16 fundamental right to right the error that's been made,  
17 apparently. I don't think it works that way. I think  
18 Mr. Belendiuk is a natural person party. He is entitled to be  
19 here. I think that's what your order contemplated. I think  
20 that that's what's fair. I think that his interest is a very  
21 limited one, it's professional and personal. I think that  
22 everyone should have that right, I deeply believe that, I hope  
23 that you would deeply believe that as much as I deeply believe  
24 that. I think that's fundamental.

25           MR. WEBER: Well, if I may ask a question of the



1 | court? I first prefaced with the statement that when we made  
2 | the agreement to allow Mr. Belendiuk to intervene the Bureau  
3 | at least had no idea that Mr. Belendiuk through that --  
4 | intended to use that agreement to attend depositions. We of  
5 | course would have understood that Mr. Crispin would have  
6 | attended depositions and would have been the right. We had  
7 | no, we had no idea that Mr. Belendiuk also intended upon  
8 | attending depositions. However, when Your Honor granted the  
9 | motion for his intervention, if that was your intention we  
10 | will respectfully withdraw the motion at this time and just  
11 | have to take it that, that we, we didn't understand that we  
12 | gave our consent but let it go at that. So, I ask you was it  
13 | your intention upon granting Mr. Belendiuk the right to  
14 | intervene the right to also attend depositions?

15 |           JUDGE GONZALEZ: Quite frankly, probably not. But  
16 | on second thought really, Mr. Crispin's argument has really  
17 | persuaded me. I don't -- and I think it's primarily -- well,  
18 | number one, I don't, I don't really buy the intimidating  
19 | factor very much. I mean, I really don't think that these  
20 | gentlemen would be intimidated by his, by his mere presence.  
21 | Also too, I think the interests of Mr. Belendiuk are  
22 | significant and I guess my concern is because of the size  
23 | of -- which several people have alluded to, the size of the  
24 | record in this case, it would almost be -- well, not humanly,  
25 | not humanly possible for, for Mr. Crispin to have the

1 knowledge of what has transpired that his client had and I  
2 think that he would be put at a significant disadvantage if  
3 Mr. Belendiuk was not there when he needed him to clarify a  
4 point perhaps that had made by, by the person being deposed.  
5 In all of these things I view my role as the presiding judge  
6 over the administrative proceeding to try to weigh interests.  
7 I think that's all I can be. I don't know the extent to which  
8 I'm bound by the rules -- Federal Rules of Evidence. I don't  
9 think the law is all that clear-cut on that. But I do see my,  
10 my role as trying to weigh interests and I think in this case  
11 Mr. Belendiuk's interests perhaps outweigh any concern that  
12 the Bureau might have that his mere presence at a deposition  
13 would, would compromise the, the results of those, of those  
14 depositions. So, I -- my ruling is then that, that  
15 Mr. Belendiuk and company with his counsel will be permitted  
16 to sit in on the depositions and the motion will be denied.

17 MR. CRISPIN: Thank you, Your Honor.

18 JUDGE GONZALEZ: Are there any questions? All  
19 right. Well then we'll conclude. Thank you very much for  
20 your presence.

21 (Whereupon, matter concluded at 4:05 p.m.)  
22  
23  
24  
25

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN RE APPLICATION OF TELEPHONE AND DATA SYSTEMS, INC.

Name

CC DOCKET NO. 94-11

Docket No.

WASHINGTON, D.C.

Place

JULY 12, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 23 through 64, inclusive, are the true, accurate and complete transcript prepared from the reporting by LORI ALDEN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

7/15/94

Date

James Lowell, Transcriber  
Free State Reporting, Inc.

7/18/94

Date

Linda McCabe, Proofreader  
Free State Reporting, Inc.

7/18/94

Date

Lori Alden, Reporter  
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, Reporter  
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